IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2007

CORAM :

THE HONOURABLE MR.JUSTICE D.MURUGESAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.150 of 2004

Commissioner of Income-tax Cent.II,
Chennai. .. Appellant

Vs.

A.N.Dyaneswaran .. Respondent
Chennai

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal, Madras 'A' Bench, Chennai in I.T.(S&S) A.No.54/Mds/1997 dated 29.10.2003, for the block assessment years 1986-87 to 1996-97 against the order of the Assistant Commissioner of Income Tax, Central Circle II (4) Chennai 34 dated 31.1.1997 in GIR.No.24701-D.

For Appellant : Mrs.Pushya Sitaraman,
Sr.Standing Counsel for
Income-tax Department

For Respondent : Mr.V.Ramachandran,
Senior Counsel for
Mrs.Anitha Sumanth

JUDGMENT

P.P.S.JANARTHANA RAJA, J.

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income-tax Appellate Tribunal, Madras 'A' Bench, Chennai dated 29.10.2003. On 22.03.2004, this Court admitted the appeal and formulated the following substantial questions of law:-

> "1. Whether in the facts and circumstances of the case, the Tribunal had enough material to hold, and was right in deleting the additions made on account of money received by the

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assessee from persons seeking granite mining licenses from TAMIN?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the cash found in the assessee's office and residential premises was amounts given to the Tamil Nadu Basket Ball Association?

3. Whether in the facts and circumstances of the case, the Tribunal was right in treating the huge investments made in the names of the assessee's mother and son as not that of the assessee on the ground that since the mother had filed a declaration under KVSS and since the son is a bank officer who has an independent source of income?

4. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the amounts in deposits in the name of Dr.Dharmambal Namasivayam Trust cannot be included in the hands of the assessee under Chapter XIV-B in the absence of clear evidence found as a result of search?

5. Whether in the facts and circumstances of the case, the Tribunal had enough material to hold, and was right in accepting the assessee's explanation that the costly sarees worth Rs.10.20 lakhs found during the search were received as gifts at the time of marriage?

6. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition on account of estimated marriage expenses of the assessee's son?

7. Whether in the facts and circumstances of the case, the Tribunal had enough material to hold and was right in holding that the advance given to the Tamil Nadu Basket Ball Association by the assessee came out of collections made for the association?

8. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition on account of secret commission received by the assessee from foreign companies for sale of granite, on the ground

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that the revenue had not placed on record how the amount was received by the assessee?

9. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the foreign currency found in the assessee's house belonged to Seethalakshmi on the basis of a mere statement?

10. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the addition in respect of fixed deposits in the name of Narayanan should be deleted from the hands of the assessee as the said Narayanan had filed KVSS declarations?

11. Whether in the facts and circumstances of the case, the Tribunal was hyper technical in insisting only on direct evidence to prove each addition, and in not accepting circumstantial evidence?"

2. The facts leading to the above substantial questions of law are as under:-

i) The assessee is an officer of the Indian Administrative Service. At the time of search and seizure, the assessee was the Chairman Cum Managing Director of Tamil Nadu Minerals Limited ("TAMIN" in short), a Tamil Nadu Government Undertaking, which is engaged in mining and export of granites. Earlier to his posting in TAMIN, he had been Additional Collector of Salem District, District Collector of Periyar District, Managing Director of SIPCOT and Additional Secretary to Government of Tamil Nadu. It is stated that the assessee had been a basket-ball player of considerable repute and he represented the Indian Team. Also he is the Chief Patron Chairman of Tamil Nadu Basket Ball Association.

ii) The assessee's mother, late Dr.Dharmambal Namasivayam was the first woman graduate in Medicine and Surgery in Trichy. She served in many capacities at various stations of Tamil Nadu and retired as a Civil Surgeon. The assessee's father, late Namasivayam, passed away in the year 1991 and subsequently his mother also passed away in July 1996. The assessee has two sons, A.D.Senthureswaran and A.D.Sugavaneswaran. Sri.Senthureswaran is a bank officer and married. Sri.Sugavaneswaran, at the relevant point of time, was a student. The assessee is the karta of his HUF with his two sons as co-parceners and claims to possess agricultural lands received on family partition. The assessee's father, late Namasivayam, had two wives, and the other wife, namely, Mrs.Ariapoo Ammal had six children.

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iii) There was a search under Section 132 of the Income-tax Act ("Act" in short) in the case of the assessee, on 19th and 20th January 1996. As a result of search, substantial quantity of cash, jewellery and various other documents evidencing investment in movable and immovable properties and bank deposits in the name of the assessee, his mother, his children and some of his associates and also documents indicating his earnings from certain undisclosed sources, were found and seized. The search was spread over to different places where the assessee had interest, but the main places were:-

a) M-26, 10th Street, Anna Nagar, Madras and

b) Assessee's Official Chamber in TAMIN at
No.31, Kamarajar Salai, Chepauk, Madras-5.

Subsequently, notice under Section 158BC of the Act was issued to the assessee on 26.06.1996. Since the assessee was in the Central Prison, notice under Section 158BC was served on him on 29.06.1996 through the Superintendent of Central Prison, Madras. As per this notice, the assessee ought to have filed in the prescribed Form No.2-B his Return of undisclosed income duly verified, within 16 days of the service of the notice. While receiving the notice, the assessee stated that his remand has been extended upto 11.07.1996 and while in remand, it is not possible for him to prepare and submit the Return. Therefore, he requested for 15 days time for filing the Return after his coming out of the prison on bail. He came out of the prison on 13.08.1996 and he finally filed his Return only on 29.11.1996 admitting "NIL" undisclosed income. A notice under Section 143(2) of the Act was issued to the assessee on 13.12.1996. The Assessing Officer completed the assessment under Section 143(3) r/w Section 158BC of the Act on 31.01.1997 for the block period from 1986-87 to 1996-97 up to 20.01.1996, determining the undisclosed income at Rs.41,98,79,090/- and details regarding the same are as under:-

"The total undisclosed income of the assessee for the block period is computed as under:-

Asst. year	Investments under sec.69 (after set off)	Income assessable under other sources	Total
	Rs.	Rs.	Rs.
1986-87		--	Nil
1987-88	44,370	--	44,370
1989-90	64,304	--	64,304
1991-92	20,179	--	20,179
1992-93	48,02,858	15,25,673	63,28,531
1993-94	32,28,198	1,48,98,436	1,81,26,634
1994-95	--	4,46,34,244	4,46,34,244
1995-96	--	6,66,67,346	6,66,67,346

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1996-97	--	28,39,93,480	28,39,93,480
	81,59,909	41,17,19,179	41,98,79,088

Total undisclosed income Rs.41,98,79,088

Rounded off to Rs.41,98,79,090

Income-tax thereon at 60% Rs.25,19,27,454 "

While determining the undisclosed income, the Assessing Officer made a number of additions. Aggrieved by the order, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal deleted most of the additions made by the Assessing Officer and allowed the appeal partly. The dispute involved in the present appeal is related to the following additions. They are as under:-

Addition No.1 relating to Question No.1:
Addition of Rs.38,95,74,550/- made in respect of collections from applicants for granting mining licence.

Addition No.2 relating to Question Nos.2 and 7:
Addition of the amount of Rs.1,64,24,550/- being cash found in the residence and office of the assessee accepting the assessee's contention that out of this money, Rs.152 lakhs belonged to Tamil Nadu Basket Ball Association and Rs.12 lakhs belonged to the assessee's son.

Addition No.3 relating to Question No.3:-
Addition made in respect of investments made by the assessee's mother and sons amounting to Rs.2,60,45,591/- on the ground that the assessee's mother had filed a declaration under KVSS and the son is a bank officer who has an independent source of income.

Addition No.4 relating to Question No.4:-
Addition of Rs.1,69,19,621/- being donations received by Dr.Dharmambal Namasivayam Trust and interest on donation of Rs.2,91,958/- on the ground that the Trust is an independent entity.

Addition No.5 relating to Question Nos.5 and 6:-
Addition made in respect of investment in costly sarees amounting to Rs.10.12 lakhs and also deletion of addition of Rs.7,50,000/- made towards estimated marriage expenses of the assessee's son.

Addition No.6 relating to Question No.8:-
Addition of Rs.1,34,46,588/- being secret commission received from foreign companies for sale of granite.

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Addition No.7 relating to Question No.9:-
Addition of foreign currency amounting to Rs.1,93,040 found at the residence of the assessee at the time of search.

Addition No.8 relating to Question No.10:-
Addition of Rs.20,000/- in respect of fixed deposit in the name of Mr.Narayanan.

Aggrieved by the order of the Tribunal, the Revenue has preferred the present tax case.

3. Learned Senior Standing Counsel appearing for the Revenue submitted as follows:-

i) In respect of addition of Rs.38,95,74,550/-, this was worked out from the seized documents found at the assessee's residence. The seized documents are annexed to the assessment order. The details in the seized documents include names and addresses of the persons / concerns who had sought mining lease, the site of the quarry, survey number of the land and denomination of currency. The assessee cannot say that the documents do not pertain to him. The assessee has not offered any explanation in respect of the seized documents. The Assessing Officer examined 23 mining licencees and obtained the statements from them for payment to the assessee. Hence, the Assessing Officer correlated the amount mentioned in the seized documents with that of the statements obtained from the 23 mining licencees and made this addition. The details regarding the same is also given in Annexure B of the Assessment Order. The assessee also did not deny anywhere that he has not received the said amount. Further the assessee did not ask for cross-examining the persons seeking mining lease and hence the additions made by the Assessing Officer is justified.

ii) In respect of the second addition, the counsel for the Revenue submitted that the Department seized Rs.15.59 lakhs from the assessee's bedroom and further a sum of Rs.1.49 Crores from the office of the assessee. The Assessing Officer rightly rejected the explanation that the money belonged to the Tamil Nadu Basket Ball Association. Actually the monies found in the assessee's residence as well as in the office room belongs to the assessee only. Hence, the Assessing Officer after making elaborate enquiry, rightly came to the conclusion that the entire cash amounting to Rs.1,64,24,550/- found at the assessee's residence as well as his office room represented the assessee's undisclosed income and is assessable under Section 69A of the Act for the assessment year 1996-97.

iii) In respect of third addition, it is submitted that the assessee's mother was a pensioner and no accumulated funds available in her bank account. It is also submitted that there is no evidence that it was used for purchase of property. Hence the

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Tribunal is wrong in deleting the addition. Further it is stated that the declaration filed by the mother of the assessee under KVSS was accepted by the Revenue and the same has become final. Hence the benefit of KVSS will not be extended to the assessee. Coming to the other part, the assessee's son did not state how the properties were purchased, but subsequently he stated that the properties were purchased out of the agricultural income and that the money was received from his grandmother and that there is no evidence for the same. Hence the Tribunal is wrong in deleting the addition.

iv) In respect of fourth addition, the counsel for the Revenue submitted that the Tribunal failed to see that Sri Sampath Kumar who has arranged the donations for Dharmambal Trust has categorically stated before the Enforcement Directorate that he has arranged the donations by availing loans from banks on the security of the Fixed Deposits in the name of the NRI Sri.Nadadur Varadhan and he has received equal amounts of money plus commission from the assessee. The documents seized from Sri Sampath Kumar also clearly indicate the receipt of money after the donations are made. Also, it was found that the various contentions made by the Trust are bogus and the said amount belonged to the assessee only. Hence the Tribunal is wrong in deleting the addition.

v) In respect of fifth addition, there were costly sarees found and listed at the time of search. The estimated cost of the saree is at Rs.10,12,000/-. The assessee has not offered any explanation in respect of source of acquisition in respect of the sarees. In respect of wedding, the assessee's son got married on 30.08.1995 and a reception in connection with the marriage was held in Madras on 08.09.1995 in Rani Meyyammai Hall. In connection with the marriage reception, a music concert by Gangai Amaran & Party was organised. It is stated that more than 3000 people attended the marriage reception. The marriage expenses incurred has not been explained properly by the assessee. Hence, the Tribunal is wrong in deleting the addition.

vi) In respect of the sixth addition, the Assessing Officer clearly given a finding that on the basis of the seized documents, which reasonably indicate that the payments were made by the foreign companies to the Chairman of TAMIN in his personal capacity. Also, the Revenue found from the assessee's brief case, 10 documents giving details of payments made by two foreign companies. Further the Department also verified with TAMIN and it was confirmed by them by letter dated 27.11.1996 that large number of these transactions could straight away be connected to sale invoices to those concerns. Hence the Tribunal is wrong in deleting this addition without any valid material.

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vii) In respect of the seventh addition, it is submitted by the counsel appearing for the Revenue that the Tribunal is wrong in deleting the addition on the ground that the said foreign currencies belonged to Smt.Seethalakshmi and it is seen from the records that the said Smt.Seethalakshmi did not respond to the summons issued. It is also submitted that the Tribunal is wrong in merely relying on the statement of the assessee that the amount pertains to one Seethalakshmi, and the mere preliminary statement will not absolve the assessee of his onus.

viii) In respect of the eighth addition regarding the addition in the hands of the assessee, in respect of fixed deposits amounting to Rs.20,000/- in the name of Narayanan, the learned counsel for the Revenue submitted that the said Narayanan did not produce any material evidence to show that he has enough resources available to him to make the fixed deposits. The fixed deposit certificates relating to the fixed deposits were kept in the personal custody of the assessee and no proper reasons were given by the said Narayanan as to how these fixed deposit certificates were kept in the personal custody of the assessee. Hence the said fixed deposits belong to the assessee only. Therefore, the Tribunal is wrong in disregarding the relevant materials and came to the conclusion that it pertains to the said Narayanan, without basis and justification.

In view of the above, it is strenously contended by the learned Senior Standing Counsel appearing for the Revenue that all the deletions of the additions made by the Tribunal are without basis and justification and hence the same should be set aside.

4. i) Learned Senior Counsel appearing for the assessee submitted that, with regard to the first addition, the Revenue has not established that the assessee has received an amount of Rs.38,95,74,550/- and that the Assessing Officer merely relied on the documents seized which do not lead to any evidence regarding the fact of collection of any money by the assessee by granting mining licenses from various parties. Further it is submitted that in the seized material there were no indication to show that the decimals or coded figures found in these papers stand for lakhs and thousands. Further he submitted that no assets in the name of the assessee or cash to the extent claimed has been found and as such there is no material evidence in this respect. The Assessing Officer only made these additions on presumptions and there is no corroborative evidence. He further submitted that the additions were made only by circumstantial evidence. It is also a fact that the assessee was officially concerned with the grant of mining licences as a Member of High Level Committee only from 10.03.1995 after the issue of Government Order. A new Rule 39 was introduced by G.O. No.97 dated 09.03.1993 empowering the State Government to grant quarry leases on terms and conditions. This

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was struck down in Madras High Court, but was upheld by Supreme Court. After the order of the Supreme Court, a High Level Committee was appointed vide G.O.No.52 dated 10.03.1995. The three members of High Level Committee appointed by Government by the G.O. were Additional Secretary / Joint Secretary, Commissioner / Director of Geology and Mining and the Chairman and Managing Director of TAMIN. The Committee is only a recommendatory body and the ultimate power to grant or reject the licences is only with the Government. So, whatever additions made in the financial years 1992-93, 1993-94 and 1994-95 have to be deleted and additions concerned with financial year 1995-96 alone should be considered. Further it is emphasised by the counsel that the addition made for the assessment year 1996-97, there are no dates available in the seized material When the dates are not available in the seized material, the Assessing Officer was of the view that the amount will have to be assessed in the year of search, i.e., financial year 1995-96, relevant to the assessment year 1996-97. It is further submitted that in the Tabular Statement against each addition in the last column, it is given as amount D/L/P, but it was not indicated among which category this particular addition comes. It is also further submitted that there is no corroborative evidence except the slips of paper seized by the Department. Hence, the addition of Rs.38,95,74,550/- has been made without any basis and justification.

ii) In respect of the second addition, the learned Senior Counsel submitted that the assessee had already given explanation that the money seized from him belonged only to Tamil Nadu Basketball Association ("TNBA" in short). The money found at the home also pertains to the rest of the family. It is the fact that the Government of Tamil Nadu hosted the SAF Games, 1995 an International Event at Chennai and the assessee was nominated as one of the three Joint Secretaries in charge of fund raising for infrastructure facilities for stadium. The Government agreed to fund through TAMIN to air-condition the Indoor Stadium of TNBA where the basketball event was to be held and issued two G.Os., namely G.O.Ms.No.276, Industries MME-2 Dept, dated 13.12.1995 and G.O.Ms.(LD)No.3 dated 06.01.1996. Anticipating delay in release of funds, General Council of TNBA by a resolution, authorised the assessee to collect funds up to Rs.2 Crores. The said TNBA collected Rs.170 lakhs from 9 persons. After spending Rs.18 lakhs for works connected with face lifting and temporary air-conditioning, the balance amount earmarked for air-conditioning amounting to Rs.152 lakhs kept in the chamber of assessee's office and in the brief case of the assessee at Anna Nagar residence, since the basketball event was advanced preventing permanent air-conditioning work to be taken up though work was entrusted to M/s.Blue Star Co. It is pertinent that this amount of Rs.152 lakhs tallies with the amount sanctioned in the G.Os., i.e., Rs.152 lakhs. The assessee discharged the primary onus by

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establishing the identity of the party, capacity of the party and genuineness of the transaction. The Revenue is wrong in rejecting the explanation of the assessee. The assessee has proved the sources of the amount and it is wrong on the part of the Revenue to expect to prove the source of sources. The said TNBA has filed its Return for the year 1996-97 subsequently including the amount of Rs.1,48,65,650/- seized from TAMIN office and Rs.3.35 lakhs seized from residence and the same has been accepted by the Department. The assessment was also completed under Section 143 (3) of the Act in the case of TNBA. So, it is wrong in making addition in the hands of the assessee.

iii) In respect of third addition, it is submitted by the learned Senior Counsel that the assessee's mother was a Doctor in the Government Hospital for a long time. Not only the assessee's mother availed declaration under KVSS but also the assessee's son who is a bank officer, also availed the declaration under KVSS for the assessment year 1992-93 to 1996-97. Hence there cannot be any levy of tax on the very same income. Tax has already been accepted from the mother under the Samadhan Scheme. Hence it is wrong on the part of the Revenue in making addition of the same amount as undisclosed income in the hands of the assessee which amounts to double taxation. In respect of the amount assessed in the hands of the assessee's son on protective basis, it is wrong on the part of the Revenue to make the addition in the hands of the assessee. Further the assessee's son had sent a statement at the time of search that he received a cash gift of about Rs.9 to 10 lakhs. Hence the assessee as well as his son have explained the source and therefore the income already assessed in the hands of the assessee's son should not be assessed in the hands of the assessee.

iv) In respect of the fourth addition, there is no proof seized from the residence of the assessee or from office at the time of search, linking the assessee directly with any of the allegations made in the assessment order. There is no proof that it is the assessee's money which was given to the Trust. One Mr.Sampathkumar has filed a sworn affidavit on 12.05.1996 in Enforcement Department clearly explaining his role. Most of the donors who were enquired have confirmed about their donation to the Trust. There is no direct payment by the assessee. His involvement was not at all proved by the Revenue. It is also seen that the entire donations have gone to the Trust and have been accounted for in its books. The said amount cannot be treated as assessee's undisclosed income and also the Trust is a separate juristic person and cannot be held as benami for somebody. Separate assessments have been made for the years 1994-95, 1995-96 and 1996-97 for the entire amount of Rs.1.69 Crores as that of the Trust. For the assessment years 1994-95 and 1995-96 the appeal was allowed by the appellate authority, but for the assessment year 1996-97, the appeal is pending before the Tribunal. Hence,

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when already similar amount was assessed in the hands of the Public Trust, it is wrong on the part of the assessee to include the same amount as undisclosed income in the hands of the assessee. The addition was made in the absence of valid materials and the same is without basis and justification.

v) In respect of the fifth addition, it is submitted by the learned Senior Counsel that most of the sarees found were gifts presented during the marriage of the son performed in August 1995 and also the assessee's mother, assessee's wife as well as the assessee's daughter-in-law are living in the same house and they are the owners of the sarees which were acquired from time to time. It is also submitted that the value of the sarees were determined at exorbitant cost without any basis and justification. Hence the addition has been made only on the presumption. Hence, the addition made is without basis and justification. Also, it is wrong on the part of the officer to make addition of Rs.7,50,000/- towards marriage expenses of the assessee's son and the trip to Singapore, as the same are purely on estimation. The assessee's mother has filed an affidavit admitting that she incurred the expenditure of her grandson in respect of the marriage expenses. Hence the addition made by the Revenue is without basis and justification.

vi) In respect of the sixth addition made in connection with the secret commission received from foreign companies, it has been made without basis and justification and the Revenue failed to produce any evidence to show the assessee's own involvement in the transaction. There is no corroborative evidence to show that these secret commissions were made directly or indirectly to the assessee. There is also no evidence as to how and to whom the payments were made. Hence the Assessing Officer is wrong in making addition on account of the secret commission received from foreign companies for sale of granite and the Tribunal is right in rejecting the Revenue's stand. Hence the addition has been made without application of mind and the same cannot be sustained. Hence the Tribunal has rightly deleted the addition.

vii) In respect of the seventh addition made with regard to the foreign currency found in the assessee's house belonged to one Seethalakshmi, the assessee had given a detailed explanation to the Enforcement Officer on 27.03.1996 and also the said Seethalakshmi appeared before the Enforcement Directorate in person and recorded her statement confirming the whole issue. When the confirmation letter was filed, the source is explained without doubt. Hence the Tribunal is right in deleting the addition made by the Assessing Officer.

viii) In respect of the eighth addition, the learned Senior Counsel appearing for the assessee submitted that the said Narayanan has explained before the authorities that he made the

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fixed deposit out of the agricultural income and the fixed deposit certificates were kept in the safe custody of the assessee. Further, the said Narayanan has also availed the benefit under KVSS. Hence it is not open to the Revenue to reject the explanation offered by the said Narayanan on the ground that the assessments were made on protective basis. Also the Revenue is wrong in ignoring the declaration made by the said Narayanan under KVSS and including the said Narayanan's fixed deposit amounts in the hands of the assessee.

5. Heard the counsel.

Question No.1 - Additions made on account of money received by the assessee from persons seeking mining licences from TAMIN.

The most important set of documents seized from the brief cases of the assessee during the search are those numbered NGN/B&D/LS-1 to 18 from the Anna Nagar residence. The documents referred to above were kept in three brief cases and the same is related to grant of mining licences. They contain the names and address of various persons who had sought allotment of mining lease, the place(s) of the quarry, survey number of the lands where the quarry was situated, denominations of some currency etc. The documents seized from the brief cases of the assessee, can by and large, be classified into three categories of source material:

> "a) The first category is the slips of paper from the applicants and / or their representatives in the handwriting of either the applicant or a representative containing the name and at times, the addresses of the applicant, the location of the land for which mining licenses is requested (details such as the name of the village, taluk, district, survey number and extent of land). Some slips contain the quality of granite such as black, paradiso, kashmiri etc. and some slips contain certain denominations of money.
>
> b) The second category of data is hand written notes, primafacie, in the handwriting of Shri Dyaneswaran on his own letter heads and the letter heads of the TAMIN (confirmed to be his hand writing by the Govt. Examiner of Questioned Documents). Each of the entries contain details such as Sl.No., name of the applicant, name of the place, survey number and extent and the amount. Generally, this amount is shown in a coded form that too decimal places. Apparently, the whole number stood for lakhs and the decimals stood for thousands. Some of the entries have been rounded off and / or tick-marked. In respect of some others, another coded number is written below that, probably indicating the amount received or receivable.
>
> c) The third set of documents are typed sheets with details of the name and brief address of the applicant, the details of the mine, viz., the village, taluk and survey number, the nature of granite and extent. These

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were probably prepared by the staff who prepared papers for consideration of the High Level Committee or those who prepared the minutes of the meetings of the High Level Committee. Against most of the times, in a coded form some handwritten numbers with two decimal places have been recorded. These handwritten numbers are primafacie in the handwriting of Shri.Dyaneswaran. In fact, on some of the typed sheets where some columns are left blank, they are seen to have been filled up by him in his hand. The coded numbers in the last column in their list and the list referred to above at (b) cannot be just wished away as inconsequential or meaningless numbers as they have been totalled and certain calculations have also been made based on such numbers."

The Assessing Officer made the addition in respect of the collection from the applicants for mining licences which has been classified into three categories:-

1. Those in Mr.Dyaneswaran letter head and in the letter head of TAMIN - marked as 'D'.
2. Those appearing in the typed lists which apparently were made for / by the High Level Committee - marked as 'L'.
3. Slips in the handwriting of the applicants / their representatives - marked as 'P'.

The year-wise total collection is arrived at based on the dates found in the materials seized. Where date is not available, such amounts are totalled and shown separately. For the purpose of taxation, the amount for which dates are not available are being considered in the year of search, i.e., the assessment year 1996-97. Details of additions made are as under:-

Financial year	Asst. year	Amount (Rs.)	No. of licences
1992-93	1993-94	17,93,500	11
1993-94	1994-95	4,43,12,200	134
1994-95	1995-96	5,98,51,250	306
1995-96	1996-97	8,04,18,250	198
Dates not available	1996-97	20,31,99,350	345
	TOTAL	38,95,74,550	994

The Assessing Officer, when he made the assessment, he was of the view that the complete one-to-one matching of the entire dates is not possible and further stated as under:-

> Thus, a complete one-to-one matching of the entire data is not possible. But it could be seen as per the list enclosed that in a number of cases, the data is traced in all the three lists and in some cases, the data is traced in two lists. Of the documents seized, 164 documents are of the type referred to in the first category described in (a) above. Of

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these details relating to the mines mentioned in 125 records have corresponding matching entries in one or both of the other two categories described above and details relating to mines mentioned in 70 records appear in all the three categories listed. Of the total data available in respect of mines (995) for which licences were applied, details relating to 359 mines appear in more than one list. The internal consistency of the materials seized from the assessee also shows that the papers relate to grant of mining licences only and unless they had some significance the assessee would not have retained them. The amounts mentioned in coded decimal form is in lakhs and thousands as in many cases, the decoded amounts tally with the amounts mentioned in the slips in the handwriting of the parties and / or their representatives and in some of the cases even the denomination for the amount was recorded. The results of random verification carried out with the applicants who parted with money in favour of Shri Dyaneswaran for grant of licenses is given below. But one thing that needs to be pointed out here is that it is neither humanly possible nor is it required under the law that in respect of each and every person money has been paid and received as per details noted in the seized documents. All that one can and has to establish was that there was a practice of collection of money for grant of licenses and infact in many cases, the rates are also fixed. [It probably depended on the quality of the granite and in many cases, it works out to Rs.1,50,000/- per acre. Whereas in respect of limestone, it was a different figure and for quarries, yet another figure etc.] and with reference to a sample population that payment has actually been made by the applicant for obtaining the licence [or to be more correct for recommending the grant of licence]. These have been conclusively brought out in the statements of the persons examined."

From the above it is clear that out of the seized materials, only 23 cases were examined as against 994 licencees. In this case, the Assessing Officer selected only 23 mining licencees out of 994 licencees and obtained the statements from the said 23 mining licencees. Based on the statements given by them, he came to the conclusion that the assessee received illegal money and the same

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is treated as undisclosed income of the assessee. In respect of remaining 971 mining licencees, there was no further enquiry or no statements were obtained by the Assessing Officer, and without further enquiry and investigation into the matter, the Assessing Officer came to the conclusion that the assessee would have received illegal money and the same is treated as undisclosed income. Here, it is seen that even though he obtained statements from 23 persons, no opportunity was given to the assessee to cross-examine. Further in respect of others, no statement was obtained or no cross verification was done. Also, no other evidence were produced by the Revenue. When the assessee asked for cross-examining in respect of 23 persons, the Assessing Officer has not given any opportunity to cross-examine. Besides, no opportunity is given by the Revenue to cross-examine the remaining persons. The papers seized from the brief cases had been divided into three, one prepared by the applicants or their representatives in their handwriting with their address, location, etc. in which there is no mention of any of the assessee's alleged handwriting. The second category are written notes, which according to the Revenue, prima facie, by the assessee in his letter head or that of TAMIN, which is in the handwriting of the assessee, which fact had been confirmed by the handwriting expert. These papers contain coded numbers with two decimals which apparently stand for lakhs and thousands, according to the Revenue. In the same papers, another coded number is written below the first coded figures which, according to the Revenue, probably indicate the amount received or receivable and the third set of papers is said to be prepared by the staff who prepare such papers for the High Level Committee for its meeting. Again, in these papers there were coded hand-written number with decimals which again prima facie, according to the Revenue, is in the handwriting of the assessee. From the above, it is clear that that regarding the first set of papers, there is no claim even by the Revenue that it is written in the assessee's handwriting and only in some papers there is mention of some denominations of money. It is not clear how the Assessing Officer arrived at the conclusion that the coded figures are standing for lakhs and thousands. It is again not certain whether it is a receipt or payment. The Revenue was of the view that it stands for receipt. There is no corroborative evidence to hold that it is actually receipt. But in this case, the Assessing Officer, in the Assessment Order, gave illustrations that the slips for the summary of the statements recorded from 23 applicants were seized from the assessee. But no opportunity was given to the assessee to confront the person concerned by way of cross-examining the applicants. There is no dispute that no opportunity was given to the assessee, even though there was a specific request made by the assessee. Hence, the statements taken are only from persons said to have made the payments and they do not establish that the figures mentioned in the seized papers are speaking nothing, nor was the assessee given an opportunity to cross-examine these deponents. It is seen from the

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statements that most of the persons claim that they have not made direct payment, but it was made through some of their employees. Their statements are not brought on record. The Tribunal had given a finding at Paragraph 78 that the assessee was not given an opportunity to contradict the statements of such persons. If the assessee specifically makes such a request, it is imperative that an opportunity should be extended to the assessee which has not been complied with. Therefore, we are of the view that the statements cannot be acted upon. In Paragraph 81 of the Tribunal's order, it is stated as follows:-

> "Another statement recorded is from one Shri P.Rajasundar Singh, Partner of M/s.Eagle Granites, Madras. This statement was recorded on 31-12-96. Answering question No.4, the deponent says that he made the application to the Collector of the District in the format prescribed and made the deposit required as per the law. The application was forwarded by the Collector to Mining & Geological Department and to the Tahasildar and Dy.Director of Mines and Geology, Madras for inspection, and it is the Director of Mining and Geology who will recommend and send the application to the Industries Department. Answering Question No.7, the deponent says "No', we have not paid any money to anybody apart from the legal fees etc. for clearing the licence. When the deponent was confronted by the seized material from the assessee's brief case, ultimately he agrees he made some payments in addition to this. Answering question No.15, he says that he made the payment to the assessee about two months prior to the issuance of the licence. At the end, he expressed his regret for the mistake by not telling the truth first. We are unable to take this statement also at its face value. It is very difficult to attribute the payment to the assessee as for getting the quarry licence. The procedure followed is clear from the answer to question No.4. The application was made to the District Collector who in turn forwarded it to the concerned Tahasildar for inspection and to report to the Director of Mining & Geology for recommendation for issuance of licence. It is again to be seen that the assessee was never afforded an opportunity to confront the deponent. Revenue says that all the papers were subsequently given to the assessee. It is also the case of the Revenue that it is not relying on these

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statements. If he is not relying on these statements, then there is no meaning in taking statements and putting them on record. Further, in the absence of any cross-examination of the deponents by the assessee, none of these statements could be used against the assessee. Therefore, we are of the view that the Revenue's case that the seized materials speak voluminously for the collection of illegal receipt by the assessee is not established. There is no corroborative evidence except the slips of papers seized. It is true, the assessee is neither denying or admitting receipt of payments in connection with the issuance of licence for quarrying. It is established by the Revenue that some of the papers are prepared in the office of High Level Committee for the purpose of High Level Committee. At least the staff who are said to have prepared these papers should have examined to find out the truth of these papers. If the applicant says he paid money to the assessee, then it was very essential to give an opportunity to the assessee to confront the person who claimed to have made the payment to the assessee, assessee being the affected party or the accused. Even otherwise, we find that the decision of the Hon'ble Allahabad High Court reported in 183 ITR 388 (Pushkar Harain Sarraf v. CIT) does not support the case of the Revenue that sub-section (4A) of s.132 is a presumption in Revenue's favour. In this case, the Hon'ble High Court held at page 391 that "Taking the first question first, we are clearly of the opinion that the presumption arising under section 132(4A) is available only in regard to and in the context of search and seizure. Sections 132 to 132B of the Income-tax Act, in our opinion, embody an integrated scheme laying down comprehensively the procedure for search and seizure and the power of the authorities making the search and seizure to order the confiscation of the assets seized under section 132 of the Act, that is, the presumption arising under sub-section (4A) of section 132 applies only in relation to the provisional adjudication which is contemplated under sub-section (5) of section 132. Sub-section (5) of section 132 provides for estimation of the undisclosed income or the

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> calculation of the amount of tax on the income so estimated and the determination of the amount of interest payable or the amount of penalty imposable in a summary manner. For this limited purpose, the Legislature has provided under section 132(4A) that the books of accounts, other documents, money, bullion, jewellery or other valuable articles seized from the possession of the assessee shall be presumed to belong to the assessee if they are found in the possession or control of the assessee in the course of the search. A similar presumption may also be made as to the correctness of the contents of the books of account so seized. So also the signature and every other part of the books of account may be assumed to be in the handwriting of the person by whom it is purported to have been written"."

Further, in the absence of any cross-examination of the deponents by the assessee, none of these statements could be used against the assessee. Therefore we are of the view that the Revenue's case that the seized materials speak voluminously for the collection of illegal receipt by the assessee, is not established. There is no corroborative evidence except the slips of papers seized. It is true that the assessee is neither denying or admitting receipt of payments in connection with the issuance of licence for quarrying. From a reading of the above, it is clear that the Assessing Officer had not given any opportunity to the assessee. In the assessment order, it is clearly stated that it is humanly impossible to correlate. It is further stated in Paragraph 3.61 as follows:-

> "Otherwise if one were to concede the assessee's demand one should have gone about and examined the 1000 and odd parties, allowed opportunity of cross examination to the assessee and based on results of such examination and cross examination, reexamine all of them for completion of the exercise and add up such payments to arrive at the undisclosed income from this source. Anybody can imagine that such a procedure is not pragmatic and not rational. The slips of papers in parties handwriting giving denomination of the amounts, assessee's own letter head showing in his own handwriting and identical details in a typed list where again such details tally in a number of instances and the meticulous way they were carefully preserved by the assessee cannot be brushed aside as inconsequential and irrelevant, the

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> way the assessee would like them to be dealt with. They have to be taken to a logical end, because they are not without a meaning or a significance. Their significance is crystal clear already with circumstantial evidences, such as getting the quarry lease licence within a short time from the date of payment (mentioned in the party's slips)."

Further it is seen in this case that notice under Section 158BC was issued on 26.06.1996. Later notice under Section 143(2) was issued on 13.12.1996. Further the statements were taken only from 23 applicants on various dates and the last one was taken only on 27.01.1997. The assessment was completed on 31.01.1997, i.e., the last due date for completing the assessment. From the above it is clear that there is a paucity of time to call for the statements from other applicants and also no opportunity has been given to the assessee to cross-examine the applicants. Obviously, the reason is that the Assessing Officer had to make the assessment on or before 31.01.1997 under Section 158BE of the Act. The said provision deals with time limit for completing the assessment which says that the Assessing Officer has to complete the assessment within one year from the end of the month in which the last of the authorisations for search under Section 132 or for requisition under Section 132A, as the case may be. One of the main reason given by the Tribunal for disregarding the statements and documents relied on by the Revenue is that, no opportunity given by the Assessing Officer to the assessee to cross-examine the same. Taking into consideration all the above factors, we are of the view that the assessments were completed without giving proper opportunity to the assessee to cross-examine the applicants. In this case, the Assessing Officer has called only 23 persons and obtained the statements. The balance of the seized materials related to several applicants and the Assessing Officer did not make any attempt to correlate or verify or try to obtain the statements from the other applicants, as has been done for 23 cases. On the basis of the statements given by the 23 persons, the Assessing Officer presumed that whatever figures appearing in the seized material would represent the undisclosed income of the assessee. Also, it is seen that for the seized materials relating to 345 applicants, no dates have been mentioned. In respect of the same, the Assessing Officer totalled the amount and made the addition of Rs.20,31,99,350/- in the year of search, i.e., for the assessment year 1996-97. The said huge addition is made without verification from the 345 persons. The fact whether really the amounts have been paid or not is not mentioned. Even if we assume that the said amounts were paid, the details regarding the dates of payment are also not mentioned. Without considering the above aspects, the Assessing Officer made this addition without basis and justification. There are procedural irregularities, defects and infirmities, which are as follows:-

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a) No opportunity given to the assessee to cross-examine.
b) The Revenue obtained statements only from 23 applicants and left out 971 applicants who applied for licence.
c) In respect of 345 applicants, no dates are mentioned in the seized materials. The Assessing Officer, simply totalled the amounts and made an addition of Rs.20,31,99,350/- for the assessment year 1996-97.
d) The Assessing Officer himself stated that it is impossible to correlate and obtain statements from the licencees.
e) Paucity of time to complete the assessment - Notice given under Section 143(2) of the Act on 13.12.1996. The statement taken from one of the 23 mining licencees was only on 27.01.1997 and immediately the assessment was completed on 31.01.1997.

In the present case, the Tribunal allowed the appeal of the assessee mainly on three grounds:-
a) There is no examination on the deponent by the assessee and hence none of the statements can be used against the assessee.
b) There is no corroborative evidence except the slips of papers seized.
c) Merely because these slips of papers were found in the assessee's residence, the entire papers cannot be attributed to the assessee without getting elucidated from the parties concerned.

From a reading of the above, it is clear that the assessment was made without proper enquiry and in this case, the assessment order passed by the Assessing Officer suffers from procedural irregularities, defects and infirmities. The Tribunal ought to have remitted the matter to the Assessing Officer for further investigation. In view of the above procedural irregularities, defects and infirmities in the order of the Assessing Officer, especially in the interest of justice, we set aside the order of the Tribunal and remit the matter to the Assessing Officer with a direction to consider the matter afresh, keeping in view of the discussions made above, and pass orders after giving opportunity to the assessee in accordance with law.
Question Nos.2 & 7 - Cash found in the assessee's office and residential premises
During the search a cash amount of Rs.15,58,900/- was found in the assessee's bed room. Out of it, Rs.15,50,000/- was seized. Apart from this, cash to the extent of Rs.1,48,65,650/- was found and seized from the assessee's official chamber at TAMIN. The assessee stated that he had kept the cash belonging to the TNBA, of which he is the Chairman-cum-Chief Patron, with him and such cash would be about Rs.2 to 3 lakhs. When questioned about the cash found at his office, the assessee stated that about one crore of rupees in cash may be available and that the entire money

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belonged to TNBA. It was stated that the money was collected from TNBA enthusiasts as a stop gap arrangement till the money sanctioned by the Tamil Nadu Government was released. It was further stated that no receipts had been given to the persons who gave the money and also the receipts were also not recorded in the books of TNBA. The collections were done on a war-footing because the Government had not released the funds sanctioned. When questioned further, the assessee gave the names of some persons and they are as under:-

1. Karthikeyan of Salem Basketball Association
2. Sivanadiyan of Madurai Basketball Association
3. Kalaiselvan of Trichy Basketball Association
4. Viswanathan of Karur Basketball Association
5. Shanmugasundaram of Periyar Dt. Basketball Association

It was stated that these persons had given loans from Association Funds or from private individuals. It was also stated that nobody other than the assessee was keeping the funds belonging to TNBA. It was also stated that Madurai Association has paid Rs.3 to 5 lakhs, Trichy and Karur Associations have paid Rs.5 to 10 lakhs and Periyar and Salem Associations have paid Rs.5 to 10 lakhs etc. The main case of the assessee is that the money belongs to TNBA but was in the possession of the assessee for the work of the stadium. The said money was collected from parties as advance for the work of the stadium. The assessee identified nine persons and the names of all these persons were given. The Assessing Officer examined these persons and all of them confirmed having advanced money. The persons who had been examined, confirmed having advanced money to the extent of Rs.1.2 Crores. The other persons who claimed to have advanced money to the extent of Rs.50 lakhs have not been examined by the Assessing Officer. So, the assessee had discharged the primary onus of giving the identity of persons and the assessee is not supposed to discharge the onus of proving the source of sources. Seven persons who had been questioned, have admitted that they had handed over the money to the assessee. The Assessing Officer only disbelieved it because they have no source. The Assessing Officer also disbelieved the explanation because TNBA has no proper source. The statements given by various persons who had made the donations to the TNBA, have been considered by the Tribunal in its order, from paragraphs 102 to 127. It is seen that the Tribunal found that most of the names given by the assessee are of Basketball Association Members. The collection of the funds may not be in a legally accepted way. It was not denied that there were some attempts to air-condition the entire stadium and also there were works undertaken in anticipation of funds from the Government. So, the money collected for the above purpose, though not in a legally accepted way, cannot be treated as the assessee's personal asset. It is seen that, subsequently TNBA had filed its Return and the same has been accepted with the condition that this would not preclude the Revenue from contesting the issue in higher forums. In the hands of the TNBA, the assessee had been denied

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the benefit of exemption and an amount of Rs.152 lakhs had been brought to tax. Assessment had been completed under Section 144 r/w Section 143(3) and penalty had also been levied which means that the Revenue had treated this assessment as substantive and the tax had been accepted. So, the assessee had discharged the preliminary onus by establishing the identity of the party, capacity of the party and genuineness of the transaction. The identified party, i.e., TNBA acknowledged their role and disclosed that nine persons who are mostly concerned with basketball activities, have advanced the money of Rs.170 lakhs. Out of nine persons, the revenue examined seven persons and all of them confirmed having advanced monies, i.e., Rs.120 lakhs for the purpose. Revenue had not examined two persons who gave Rs.50 lakhs though all details about them were furnished. The source of TNBA also have been proved. Hence the monies seized from the residence as well as the office of TAMIN belong to TNBA. The Government of Tamil Nadu hosted the SAF Games 1995, an International event at Chennai and the assessee was nominated as one of the three Joint Secretaries in charge of fund raising for infrastructure facilities for the stadium. The Government agreed to fund through TAMIN, to air condition the Indoor Stadium of TNBA. Anticipating delay in release of funds, the General Council of TNBA by a resolution, authorised the assessee to collect funds upto Rs.2 Crores. TNBA collected Rs.170 lakhs from 9 persons. After spending Rs.18 lakhs for works connected with face lifting and temporary air conditioning, the balance amount earmarked for air conditioning amounting to Rs.152 lakhs was kept in the chamber of the assessee's office and in the red brief case of the assessee at Anna Nagar residence, since the basketball event was advanced preventing permanent air conditioning work to be taken up though work was entrusted to M/s.Blue Star Co. The Tribunal accepted the above explanation and held that the monies seized from the residence and office premises of the assessee belong to TNBA. Merely not withdrawing the writ petition by the TNBA and also no suit or claim filed by the person who is said to have paid the money, would not alone be sufficient to include the amount as undisclosed income in the hands of the assessee. It is also seen that the TNBA has filed its Return for the assessment year 1996-97 and subsequently it had included the amount of Rs.1,48,65,650/- seized from TAMIN office and Rs.3.35 lakhs seized from residence, and the same have been accepted. The assessment was also completed under Section 143(3) of the Act. Hence the assessee has proved the identity, capacity and the genuineness of the sources. The finding given by the Tribunal is based on valid materials and evidence. It is a pure question of fact and is also not a perverse one. In view of the same, the Tribunal has correctly come to the conclusion that these monies should not be included in the hands of the assessee, and rightly deleted the addition. Hence we are of the view that the deletion of addition made by the Tribunal is justified.

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Question No.3 - Investments made in the names of assesses's mother and the assessee's son

In respect of the investments made in the names of assessee's mother and the assessee's son, in the course of search it was found that there are various movable and immovable properties in the names of assessee's mother Dr.Dharmambal and the assessee's son Sri Senthureswaran, as follows:-

"I. Dr.Dharmambal:

Sl.No.	Name of investment	Period Asst.year	Amount
1.	No.9, Waterworks Colony, Kilpauk, Madras-10.	1983-84	Rs.2,30,000
	Additional Construction	1983-84	Rs.1,70,000
2.	House site at Mogappair	1994-95	Rs.2,05,000
3.	House constructed in Arasangudi	1996-97	Rs.6,31,000
4.	Investment in M/s.Aahhaa Exports as a partner	1996-97	Rs.1,00,000
5.	Investments in Shilpigrih Constructions	1995-96 & 1996-97	Rs.59,46,738
6.	Investment in Sri Bala & Co.	1992-93 & 1995-96	Rs.68,46,000
7.	Investment in Plutogranites	1996-97	Rs.11,05,000
8.	Loan to Sri Arivazhagan	1996-97	Rs.10,00,000
9.	Advance for purchase of 8, Waterworks Colony, Kilpauk, Madras-10 to Sri Marthandam	1996-97	Rs.13,00,000
10.	Investment in INAS Benefit Fund	1996-97	Rs. 1,00,000
11.	Repayment of loan and interest to Indian Members Benefit Fund - Principal		Rs. 9,00,000
	Interest (in various years)		Rs. 7,72,853

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II. Sri Senthureswaran:

1.	Half share in M-26, Anna Nagar, 10th St., Madras-102.	1993-94	Rs.10,93,000
2.	Addition to the above building	1995-96 & 1996-97	Rs. 7,24,000
3.	Agl.lands at Arasangudi	1995-96	Rs. 1,05,000
4.	Vacant site at Mogappair	1994-95	Rs 1,90,000
5.	Land at Mogappair	1994-95	Rs. 2,05,000
6.	Fixed deposit with Indian Bank	1993-94	Rs. 1,20,000
7.	Investment in INAS Benefit	1996-97	Rs. 1,00,000
8.	Investment in Unique Minerals (as a partner)	1996-97	Rs. 1,50,000
9.	Shares	1995-96 & 1996-97	Rs.21,69,000"

As regards the investments in the name of Dr.Dharmambal, the whole thing had been attempted to be explained as out of her alleged earnings from agriculture, professional income from medical practice and Rs.51 lakhs allegedly received by her from her husband. In respect of the investment made by the assessee's son, it was explained that the source was from agriculture as well as the amount given by the assessee's mother Dr.Dharmambal. Even though the Tribunal did not believe the explanation offered by the mother of the assessee in respect of the source, it is stated in paragraph 168 of its order, as under:-

> "However, we find that inspite of all these, Dr.Dharmambal has availed the benefit under KVSS and Revenue has accepted it. By this action, Revenue has treated the protective assessment made in the hands of Dr.Dharmambal as substantive assessment. Another important factor in the assessment of Dr.Dharmambal is that it is a regular assessment. Normally, if any undisclosed income belonging to any person has been detected during the search and seizure action under s.132 or requisition under s.132A, the assessment would have been

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> done under s.158BD read with s.158BC. As against this, it has been assessed as a regular assessment. In the light of the above fact, we are of the view that the addition made in the hands of the assessee on substantive basis with reference to Dr.Dharmambal cannot be confirmed. Under s.158BB(1), the undisclosed income of the block period shall be the aggregate of the total income computed on the basis of the evidence found as a result of search or requisition or other document found as a result of materials gathered or information received."

It is seen that the same amount was already declared under the Samadhan Scheme and was assessed. Also, if certain documents are found against a third party, then he should have completed the assessment against the third party under Section 158BD r/w Section 158BC of the Act. Instead of doing that, it has been assessed as regular assessment. We do not find any error or illegality in the reasoning given by the Tribunal even though the assessments are protective assessments in the hands of the assessee's mother and the assesee's son. Also having accepted the declarations made under KVSS, the assessments were completed on a regular basis under Section 143(3) of the Act. Hence the Revenue is wrong in adding the amounts in the assessee's income as undisclosed income. Hence we are of the view that the deletion of addition made by the Tribunal is justified. In respect of the assessee's son, the Revenue made protective assessment in the hands of the assessee's son and the assessee's son, who is a Bank Officer had also given a statement at the time of search that he received the gifts of about 9 to 10 lakhs in cash during the marriage reception and also received gold items. This preliminary statement was made before the revenue authorities at the time of search. The Revenue is also unable to give any material or evidence to take a different view. Hence the Tribunal is right in deleting this addition.

Question No.4 - Deposits in Dharmambal Namasivayam Trust of Rs.1,69,19,621/- and Rs.2,91,958/-

The Trust is a Public Charitable Trust formed by late Dr.Dharmambal. Dr.Dharmambal is the executor of the Deed. The assessee, the assessee's wife and the assessee's son Sri.Senthureswaran are the Trustees. The object of the Trust is relief to the poor, education and medical relief and advance of any other charitable object of general public utility. The Trust applied for registration under Section 12A of the Act on 03.02.1993 and recognition under Section 80G was also granted. The Assessing Officer was of the view that several lakhs of rupees received by the Trust were in fact assessee's money, routed through various sources. The Assessing Officer also stated that one of the persons who is said to have given donation was Sri

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Nadalur Vardhan, a USA citizen of Indian Origin. On the date of the search, one Sampathkumar, entered the premises of the assessee with cash amounting to Rs.2,16,000/- and US $ 5015/- along with other documents. The said Nadalur Vardhan is said to be a cousin of Sampathkumar. From the papers seized from the brief case of Sampathkumar and on subsequent enquiries, it came to light that the State Bank of India of India, N.R.I. Branch Madras had sanctioned loans to Sri Vardhan on various dates amounting to Rs.1,33,49,000/- which was credited in the account of the Trust by way of donation. Subsequently, repayments were made by Sampathkumar amounting to Rs.1,03,49,000/- to the bank account and the balance of Rs.30 lakhs was adjusted out of the maturity of one of the deposits. The Assessing Officer was of the view that it is very unnatural for a distant acquaintance or a close relative or friend to donate to the tune of Rs.1.34 crores and hence disbelieved the theory of donation and treated the amount as undisclosed income of the assessee. It is also seen from the records that there were various donations from various persons and while completing the assessment, the Assessing Officer held that all these donations indicate that the claim of donations was false and he made the impugned addition of Rs.1,69,19,621/- and interest thereon of Rs.2,91,958/-. After considering the arguments advanced by the assessee as well as the written arguments by the Revenue, the Tribunal had given a factual finding as follows:-

> "We are afraid, this alone is not sufficient to prove the assessee's involvement in the absence of direct payments by the assessee. It is also to be seen that the amount is going from the account of Shri Sampath Kumar to the trust. There may be shady deals which lead to strong suspicion, but suspicion will not take the place of evidence. It is to be seen that Shri Sampath Kumar is having financing business even according to the Revenue. As rightly contended by Mr.Ravi, if the trust violated the deed the consequences should visit the trust adversely. There is no evidence to show that assessee had repaid any money either to Sampathkumar or to Mr.Varadhan. It is the case of Revenue that inspite of giving opportunity, Shri Varadhan was not produced by assessee. To demonstrate that assessee is wrong and Mr.Varadhan received back the money, Revenue has not taken also any step. No summons were issued requiring his presence. It is to be seen that money has gone to Trust from some account other than that of the assessee. To come to the conclusion that such huge amount would not have been donated if equal amount has been received back is only on the basis of a

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reasoning and not on the basis of any evidence. In the absence of clear evidence found as a result of search, no addition can be made under Chapter XIV-B. If the Trust violated the deed and received money which cannot be explained, the consequences should visit the Trust and not the assessee. In the light of the above facts, we are of the view that the addition made in the hands of the assessee is not justified. The same is deleted."

From the above it is clear that the Tribunal had given a factual finding and there is no direct involvement of the assessee in the case and the amounts have been assessed under the Income-tax Act. Also, the entire donation amounts have been accounted for in the books of the Trust. Further, there is no evidence available from the Department, to show that the assessee had repaid any money either to Sampathkumar or Varadhan. Hence the additions made in respect of amounts in the name of Dharmambal Namasivayam Trust had been correctly deleted by the Tribunal on the ground that the Trust is a separate juristic person and also the same is assessed under the Income-tax Act. The Income-tax Department have also made a separate assessment n the case of Dr.Dharmambal Namasivayam Trust for the assessment years 1994-95, 1995-96 and 1996-97 for the entire amount of Rs.1.69 Crores. Further some assessments are also pending before the Tribunal. In view of the above reasons, we are of the view that the deletions made by the Tribunal are in accordance with law.

Question No.5 - Costly sarees worth Rs.10.20 lakhs found during the search

In respect of this addition, the Department found and listed number of costly sarees at the time of search. Such list forms part of the Panchanama. The total cost had been estimated at Rs.10,12,000/- (Mysore silk sarees 26 at Rs.2,000/- + silk sarees 192 at Rs.5,000/- average). The Assessing Officer made the addition of the amount for the assessment year 1996-97 on the ground that the acquisition in respect of the same had not been explained. There was a marriage function in which admittedly about 3000 guests participated. The assessee's son also in his preliminary statement, stated that most of these items were gifts received at the time of marriage. The Revenue cannot presume that the assessee had not received any gift at the time of marriage of his son and this explanation was not considered properly by the Assessing Officer and he simply rejected and no material evidence produced by the Revenue. In the absence of any evidence directly linked with the assessee, the addition made is without basis and justification. The explanation given by the assessee's son was accepted by the Tribunal and we do not find any error or infirmity in the order of the Tribunal. Also the facts given by the Tribunal are based on valid materials. Hence we are of the view

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that the Tribunal correctly deleted the addition on this count.

Question No.6 - Estimated marriage expenses of the assessee's son
The addition in respect of the estimated expenses towards marriage of the assessee's son Sri.Senthureswaran is of Rs.7,50,000/-. The assessee's mother had filed an affidavit in which it was stated that she incurred the expenditure for the marriage of her grandson. Likewise, the assessee's son accepted that he had met the expenses incurred for the Singapore trip. In her Will which was probated, the assessee's mother had mentioned about this affidavit sworn in January 1996. It was also brought on record that the marriage expenditure in respect of booking the hall was made by Dharmambal Namasivayam Trust. These explanations were accepted by the Tribunal. The addition made by the Assessing Officer is purely a guess work and the Tribunal has rightly deleted the addition made by the Assessing Officer.

Question No.8 - Secret commission received by the assessee from foreign companies for sale of granite
There are ten documents in the seized material marked NGN/B&D/LS/S-14 indicating certain details of payments made by two foreign companies by name M/s.MAGTI and M/s.INBRA. The address of these two concerns are as under:-
1. MAGTI Marble & Granite Trading Inc. Via S.Balestra, 18 6901, Lugano.
2. INBRA AG. Uhland Str.2, 6901 Wisenbac, Haida.
Both the concerns are regular customers of TAMIN of which the assessee was the Principal Officer with substantial dealings. Copies of these documents were forwarded to TAMIN for their comments regarding the relevance of their contents and TAMIN also by letter dated 27.11.1996, replied that a large number of these transactions mentioned in the documents could be straightaway connected with sale invoices to these concerns. Some of the documents contained certain notings obviously in the handwriting of the assessee. On the basis of the same, the Assessing Officer relied on Section 132(4A) on the presumption that these documents were seized from the assessee's possession. Then, the Assessing Officer came to the conclusion that the amounts mentioned in the seized documents represented payments to the assessee from these companies. Hence the Assessing Officer included these amounts in the assessee's undisclosed income. The Tribunal considered the details of these documents and found out that in most of these papers it was mentioned as "not shipped" which indicates that it has not been exported so far. The Assessing Officer himself recorded that these writings are in the handwriting of the assessee. The Tribunal had given a finding as to how the Assessing Officer came to this conclusion and further stated that the handwritings given at Page 102 and 103 in the Annexure-E of the Revenue's paper book, are of the same person. The Tribunal further held that copies of documents forwarded to TAMIN for

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comments were not placed before the Tribunal. TAMIN, in its reply by letter dated 27.11.1996, had stated that "a large number of these transactions mentioned in the document may be straightaway connected with this". This letter had also not been placed before the Tribunal as well as before us. The assessee specifically asked for the copy of the above reply of TAMIN, but the same was not given. Further, the Tribunal had given a finding in Paragraph 257 of its order, as under:-

> "Finally, though the amount was treated as passed on to the assessee, there is no mention how this amount was received by the assessee except coming to a conclusion that these are the secret commission received by the assessee. Under these circumstances, we are unable to uphold any of these additions made by way of secret commission. The additions made on account of secret commission are deleted. We have to record one of the arguments of Mr.Ravi that assessee as Chairman used to get messages from parties / office with regard to very earlier dealings and sometimes such papers are also kept in the brief case. The presence of 1992 papers in assessee's brief case, therefore, is not of much consequence."

Hence, the finding given by the Tribunal is based on valid materials and evidence and it is not a perverse one. In view of the same, we do not find any error or infirmity in the order of the Tribunal on this count, so as to warrant interference. Hence we are of the view that the Tribunal has correctly deleted the addition made by the Assessing Officer.

Question No.9 - Seizure of foreign currencies from the assessee's house valuing Indian Rupees 1,93,040/-

In the house of the assessee at M-26, Anna Nagar, Madras-102, the following foreign currencies were found and seized.

CURRENCIES	FOUND	SEIZED	VALUE IN INDIAN RUPEES
U.S. $	5061	5061	Rs.1,77,135/-
Singapore $	527	527	Rs. 13,175/-
Malaysian $	210	210	Rs. 2,730/-

In respect of the above, the assessee stated that one Mrs.Seethalakshmi Nagaraj who is a family friend of the assessee came to see his mother Mrs.A.Dharmambal, who was not well before Pongal in the month of January 1996, and requested her permission to leave the foreign currencies U.S. $ 5111, Singapore $ 527 and Malaysian Ringet 210 for safe custody in the assessee's house at

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M-26, Anna Nagar, Madras-102. Since she had to go away on a short tour, the assessee's mother gave permission and the above said foreign currencies, which was kept in a hand bag with marking, was kept at the above Anna Nagar house of the assessee. The said Mrs.Seethalakshmi Nagaraj is a green card holder of U.S.A. and her husband Mr.Nagaraj is an Engineer and now working in an American Company at U.S.A. Since he was deputed to work "Enron Project" at Maharashtra, they both came to India. They both bought U.S. Dollars and other currencies in permitted level when they came to India. Since there was a problem in "Enron Project", the said Mrs.Seethalakshmi Nagaraj came to live at Madras with her two minor sons. Since she was alone, the assessee used to be their custodian and when she wanted to go away, she came to the assessee's Anna Nagar house to leave their currencies for safe custody. This fact was revealed by the Income-tax Department and also when the said Mrs.Seethalakshmi Nagaraj came to the assessee's house to get back her money, the fact of seizure was informed to her. She also made a claim to the Assistant Director of Income-tax (Inv.) at Madras by a letter and later explained the same when she was summoned. Therefore, it was stated that the foreign currencies seized from the assessee's premises belong to the said Mrs.Seethalakshmi Nagaraj, an NRI from U.S.A. It was also stated that the said Mrs.Seethalakshmi Nagaraj filed a letter on 06.02.1996 before the Assistant Director of Income-tax stating that the currency seized from M-26, Anna Nagar, Madras, belongs to her and her husband and they were legally brought into India during their trips from U.S.A. and that they are within the exemption / permissible limits under the FERA regulations. She was temporarily in India on some domestic assignment and the seized currencies were entrusted for temporary safe custody in the house of the assessee. In this case, the said Mrs.Seethalakshmi Nagaraj, had, in her sworn statement before the Enforcement Directorate, explained how the money was brought into India. For the above statement given to the Enforcement Directorate, the said Mrs.Seethalakshmi Nagaraj also given a letter explaining the same to the Income-tax Department. After considering the statement and the explanation given by the said Mrs.Seethalakshmi Nagaraj that the money belongs to her, the Revenue also did not produce any material or evidence to prove that these currencies exclusively belong to the assessee. The Tribunal correctly come to the conclusion that the explanation given by the assessee is probable and plausible and deleted the addition made by the Assessing Officer, for the assessment year 1996-97. The finding given by the Tribunal is based on valid materials and evidence and it is not a perverse one. It is only a pure question of fact and the same does not require interference.

Question No.10 - Fixed deposits in the name of Narayanan
In respect of the addition made towards fixed deposit in the hands of the assessee, the said Narayanan admitted that the fixed deposits amounting to Rs.20,000/- have been made out of his own

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income. The said Narayanan stated that he had taken the property by way of lease from the year 1985 onwards and out of that income he made deposits and had also written a letter dated 04.02.1996 to ADA (Inv.), Madras stating that the fixed deposit certificates kept in the personal custody of the assessee are his personal property. It is also seen that the said Narayanan had settled the matter by declaration under KVSS against his assessment completed under Section 143(3) of the Act. Hence, based on the explanation offered by the said Narayanan as well as the fact that he had offered the said amount under KVSS, the Tribunal rightly came to the conclusion that the addition cannot be made in the hands of the assessee. The Tribunal correctly deleted the addition and also it is a pure question of fact. Hence the same does not require interference.

Question No.11 - Whether the Tribunal was hyper technical in insisting only on direct evidence to prove each addition and in not accepting circumstantial evidence:-
The Tribunal has given reasons to delete the addition. It is incorrect to state that the Tribunal deleted the addition on technical ground. In respect of Question No.1, which is related to the first addition, we have remitted the matter to the Assessing Officer with certain directions. Regarding the other additions, the Tribunal deleted the additions by relying on valid materials and evidence available on record and the same were confirmed. Hence the above question now becomes academic and therefore the same does not require consideration by this Court.

6. To summarise:-

Question No.1	- Remitted to the Assessing Officer with observation.
Question Nos.2 to 10	- Answered in favour of the assessee.
Question No.11	- As this question has become academic, it does not require consideration by this Court.

Accordingly, the Tax Case is partly allowed. Consequently, T.C.M.P.No.118 of 2005 is closed. No costs.

km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Asst Registrar,
Income Tax Appellate Tribunal,
IIIrd Floor, Rajaji Bhavan, Besant Nagar, Chennai 90.

2. The Assistant Registrar,
Income-tax Appellate Tribunal,
Chennai Bench 'A',
Chennai.

3. The Assistant Commissioner of Income-tax,
Central Circle II(4), Madras-34.

4. The Commissioner of Income Tax, Central II,
Chennai.

+ 1 cc to Mr. Pushya Sitaraman, Advocate SR No. 54913

+ 1 cc to Mr. Dr. Anita Sumanth, Advocate SR No. 54855

PV(CO)
SR/12.9.2007

T.C.(A) No.150 of 2004

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